

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

Case No. 2:19-CR-20028-001

MARCELINO WILLIAMSON

DEFENDANT

OPINION AND ORDER

Before the Court is Defendant Marcelino Williamson's motion to suppress (Doc. 13) evidence that a firearm was seized from his vehicle after his arrest on July 8, 2019. The Government filed a response. (Doc. 23). The Court held a hearing on the motion on October 30, 2019. At the hearing, Mena Police Department Officer Judson Dalton Myers and Sargent Ronnie Richardson testified during the Government's case. At the end of the hearing, the Court took the matter under advisement. For the reasons set forth below, the motion to suppress will be DENIED.

I. Background

On July 8, 2019, Marcelino Williamson was arrested pursuant to a warrant for his arrest for violation of an order of protection. The temporary order of protection was ordered against Williamson on June 7, 2019, in the Circuit Court of Polk County, Arkansas. On June 19, 2019, a hearing on the final order of protection was held. A final order of protection was entered and Williamson was served the order of protection on June 19, 2019.

The next day, June 20, 2019, the Mena Police Department responded to a call from the victim covered by the protection order, who reported Williamson was at her residence in violation of the order. On June 24, 2019, an officer was notified that Williamson had returned to the victim's residence. The officer saw Williamson later that day and told Williamson not to return to the victim's residence and that he was applying for a warrant because of the reported violation.

On June 30, 2019, Officer Judson Dalton Myers came into contact with Williamson. Officer Myers was responding to a call about a loose pig. Because the pig was running wild, Officer Myers went to find the owner of the pig while Sargent Ronnie Richardson chased the pig down. Officer Myers went to a residence in hope that the pig's owner would be there.¹ The residence was described at the hearing as a mobile home with a porch. Officer Myers saw Williamson in a chair asleep on the porch and entered the porch to do a welfare check.

Upon entering the porch, Officer Myers saw a firearm "an arm's reach away" from Williamson in a digital camo holster and a shotgun on the wall. Officer Myers testified that he knew there was an order of protection against Williamson at that time. Because of the order of protection, Officer Myers asked Williamson about the firearm and Williamson told him the firearm belonged to the homeowners. Officer Myers discussed the order of protection with Williamson and told Williamson he could not have firearms because of the order of protection. Officer Myers left the residence without inspecting the firearms.

On the morning of July 8, 2019, Officer Myers began his shift at the Mena Police Department by reviewing current arrest warrants, which included Williamson's warrant. Dash cam video from Officer Myers's vehicle shows at approximately 7:37 a.m. that morning, Officer Myers passed Williamson's truck near the car wash. Officer Myers turned around and drove into the car wash parking lot. (Govt. Ex. 1).

Officer Myers communicated with dispatch as he was pulling into the car wash. Williamson opened the driver's side door to the truck as Officer Myers parked his vehicle behind Williamson's truck. Officer Myers arrested Williamson pursuant to the warrant. After handcuffing Williamson, Officer Myers conducted a pat down of Williamson and placed

¹ It is unknown whether Mena Police Department personnel ever apprehended the pig.

Williamson in the back of the police car.

Sargent Richardson arrived at the car wash as Officer Myers was placing Williamson in the police car. Sargent Richardson opened to the door of Williamson's truck to search it. Almost immediately upon opening the door to the truck, Sargent Richardson saw the handle of a firearm.

Officer Myers took the firearm back to the police car where he ran a records check to determine if the firearm was stolen. On the dash cam video, Officer Myers can be heard asking Williamson why Williamson had the firearm when he had an order of protection against him. Officer Myers then reminds Williamson that he had previously told Williamson not to have a firearm. During that exchange, Sargent Richardson continued searching the vehicle and filled out a "Tow-In Report" detailing the items found in Williamson's car. (Govt. Ex. 4). Once the search was complete, Officer Myers took Williamson to jail.

An indictment was filed in this Court on August 16, 2019, charging Williamson with one count of being a person subject to a court order possessing a firearm on or about July 8, 2019, in violation of Title 18 U.S.C. §§ 922(g)(8) and 924(a)(2). A superseding indictment was filed on October 4, 2019, charging Williamson with an additional count of being a person subject to a court order possessing a firearm on or about June 30, 2019, in violation of Title 18 U.S.C. §§ 922(g)(8) and 924(a)(2).

In the interim, Williamson filed a motion to suppress on September 19, 2019, arguing the firearm found during the July 8, 2019 arrest should be suppressed because the search of the vehicle was not executed pursuant to a warrant and no exceptions to the Fourth Amendment warrant requirement apply. Specifically, Williamson argues the inventory exception does not apply because the car was not impounded according to Mena Police Department written policy. The Government argues the inventory exception does apply because the Mena Police Department has

an unwritten policy that when there is a custodial arrest of the driver of a vehicle, the vehicle will be towed, and the written policy directs that any towed vehicle must first be inventoried.

II. Analysis

The Fourth Amendment of the Constitution secures persons against unreasonable searches and seizures. U.S. Const. amend. IV. “Searches conducted without a warrant are per se unreasonable, subject to a few well-established exceptions.” See *United States v. Hill*, 386 F.3d 855, 858 (8th Cir. 2004).

A. Inventory Exception

The inventory exception to the Fourth Amendment “permits law enforcement to inventory the contents of a vehicle that is lawfully taken into custody, even without a warrant or probable cause to search.” *United States v. Garreau*, 658 F.3d 854, 857 (8th Cir. 2011). The purposes of an inventory search are to protect the owner’s property, protect the police against claims of stolen property, and protect police from danger. See *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). “The central question in evaluating the propriety of an inventory search is whether, in the totality of the circumstances, the search was reasonable.” *United States v. Hall*, 497 F.3d 846, 851 (8th Cir. 2007) (citing *United States v. Kennedy*, 427 F.3d 1136, 1143 (8th Cir. 2005)) (internal quotations omitted). Inventory searches are reasonable if conducted “according to standardized police procedures.” *Id.* (internal quotations omitted). “Standardized police procedures are necessary to ensure that the search is not merely a ruse for general rummaging in order to discover incriminating evidence.” *Id.* (internal quotations and citations omitted). Testimony may be sufficient to establish standardized police procedures. See *United States v. Petty*, 367 F.3d 1009, 1012 (8th Cir. 2004) (finding officer’s testimony of towing policy enough to show standardized policy).

Williamson argues the Mena Police Department's written policy did not allow officers to tow his vehicle following his arrest, and so its search was not conducted in compliance with standardized police procedure. Williamson centers his argument on the written policy and procedures manual for the Mena Police Department. The written policy describes only eight circumstances when officers may tow a vehicle. (Govt. Ex. 2). There is no mention of towing a car after a custodial arrest in general, but only in the event of a DWI or DUI arrest. Because the written policy does not provide for towing after a custodial arrest, Williamson argues there is no standardized policy to satisfy the inventory exception.

However, at the hearing Officer Myers and Sargent Richardson testified that there was an unwritten policy followed by all Mena Police Department officers to tow any vehicle when the driver is placed under custodial arrest. Additionally, neither Officer Myers nor Sargent Richardson had knowledge of the written policy at the time of Williamson's arrest. According to Sargent Richardson, the written policy was from 2015 and officers are trained on inventory and towing procedures through "on-the-job" experience. Officer Myers testified that the normal policy is to tow any vehicle when the driver is placed under arrest and officers only make exceptions to the policy about 3% of the time. The testimony regarding the unwritten policy to tow after a custodial arrest of the driver establishes a standardized police procedure for towing vehicles. Because there was a standardized procedure to tow vehicles when the driver was placed under custodial arrest, the search was reasonable under the inventory exception to the Fourth Amendment warrant requirement.²

² The facts in the present case are similar to those in *United States v. Arrocha*, 731 F.3d 1159 (8th Cir. 2013). In *Arrocha*, the defendant was parked at a gas station when he was arrested pursuant to a warrant. See *Arrocha*, 731 F.3d at 1160-61. Officers decided to tow the vehicle and performed an inventory search. *Id.* The inventory search revealed a firearm. *Id.* The defendant argued the officer's decision to impound the car violated the Fourth Amendment. *Id.* at 1163.

Williamson also argued the unwritten policy contradicted the written policy because the stated purpose of the written policy was to “establish a uniform criteria for the towing, inventory, and storage of vehicles” (Govt. Ex. 2). Although the written policy does not include a paragraph describing the tow policy following a custodial arrest, the Court finds this shows the written policy is incomplete and not that the policies are contradicting. At any rate, the difference between written and unwritten policy at most establishes a question of credibility, and the Court finds the testimony of Officer Myers and Sargent Richardson was credible.

Williamson further argues the written policy was violated because his truck was on private property and the written policy states vehicles abandoned on private property are not to be towed by officers. Williamson was arrested in the car wash parking lot, which is indeed private property. But Williamson’s truck was not abandoned on private property. Instead, Williamson was in his truck when the traffic stop began. The officers towed the truck because Williamson was operating the truck immediately prior to the arrest, not because it was abandoned. Finally, even if the officers had not followed the written policy, failure to adhere to standardized procedures when conducting an inventory search does not make the search unreasonable as long as the search is “not a pretext for an investigatory search.” *See United States v. Taylor*, 636 F.3d 461, 465 (8th Cir. 2011) (finding failure to adhere to policy made inventory search unreasonable when officer testified vehicle was searched only because officer believed vehicle contained drugs). The credible testimony established the reason for the search of the truck was solely to do an inventory because Williamson’s truck was going to be impounded. Because the search was not a pretext for an

Testimony from officers determined there was an unwritten policy to tow cars after arrests from the gas station. *Id.* The Eighth Circuit found the officers testimony of an unwritten towing policy was evidence of a standardized police procedure. *Id.* Like in *Arrocha*, here the testimony establishes a standardized policy for impounding following custodial arrest.

investigation, the inventory exception applies.

B. Automobile Exception

Even if the search was pretextual, the automobile exception to the Fourth Amendment is satisfied. A vehicle may be searched without a warrant “if law enforcement had probable cause to believe the vehicle contained contraband or other evidence of a crime before the search began.” *See United States v. Wells*, 347 F.3d 280, 287 (8th Cir. 2003) (citing *United States v. Fladten*, 230 F.3d 1083, 1085 (8th Cir. 2000)) (internal quotations omitted). “Probable cause exists when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime would be found in a particular place.” *Id.* (internal citation and quotations omitted). “Probable cause may be based on the collective knowledge of all law enforcement officers involved in an investigation and need not be based solely upon the information within the knowledge of the officer on the scene if there is some degree of communication.” *Id.* (internal citation and quotations omitted). “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *Id.* (citing *United States v. Ross*, 798, 825 (1982)).

Based on the testimony at the hearing, the Court finds the officers had probable cause required to search the truck for a firearm under the automobile exception. Officer Myers had contact with Williamson nine days prior to the arrest and saw Williamson alone and in close proximity to a pistol and shotgun at that time, apparently possessing them in violation of the order of protection. The pistol was within arm’s reach of Williamson in a camo holster. Officer Myers testified that he believed the firearm in the truck and the firearm Officer Myers saw during the June 30, 2019, incident were the same. Because Williamson had previously been observed with

firearms in likely violation of the order of protection, a reasonable officer would have probable cause to believe that Williamson had a firearm in the truck when he was arrested. The search of the truck without a warrant satisfies the automobile exception to the Fourth Amendment because there was probable cause to believe a firearm was in the truck.

III. Conclusion

IT IS THEREFORE ORDERED that Defendant's motion (Doc. 13) is DENIED. The matter remains pending for trial.

IT IS SO ORDERED this 5th day of November, 2019.

/s/ P. K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE